IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 842 OF 2005

Sadashiv M. Shetty
M/s. Yatrik Bar & Restaurant ...Petitioner

Versus

State of Maharashtra & Ors. ...Respondents

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Mr. P.C.Kansara, counsel for Petitioner

Mr. A.H. Palekar, A.G.P. for Respondents.

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CORAM: B. H. MARLAPALLE, J.

DATED: 4TH MARCH, 2005

P. C.:-

1. Heard Mr. Kansara, the learned counsel for the petitioner who had applied for licence for running entertainment or which is known as performance licence, the same was rejected by the Deputy Commissioner of Police (Headquarters) vide his order dated 5.2.2005. Being aggrieved by the same, the petitioner has submitted an appeal to the State Government alongwith the stay petition. It is submitted that the appellate authority is neither hearing the stay petition nor the appeal and therefore, this petition.

2. When substantial appeal is pending alongwith the

stay petition in it before the competent authority, it is well established that a writ petition cannot be entertained and, therefore, this petition is required to be disposed of by giving directions to the lower appellate authority to hear and decide either the stay petition or the main appeal, within a specific period on merits.

3. However, Mr. Kansara, the learned counsel for the petitioner has submitted that pursuant to the order passed by this Court on 12.1.2000 in writ petition No. 68 of 2000, the petitioner was running the amusement park/activity and therefore, he deserves to be protected until the stay petition in the pending appeal is decided.

4. On behalf of the Commissioner of Police, Brihan Mumbai, an affidavit in reply has been filed and it has been contended that without obtaining licence, the petitioner continued amusement activities and this is contrary to the rules. The affiant has relied upon the following observations of this Court (Division Bench) in writ petition No. 9632 of 2003;-

> "The court cannot permit such performances in the absence of a license which is mandated by rules which have statutory

> force. To do so would be to encourage defence of law, a consequence which the court cannot countenance. Absent a licence there can be no performance."

5. The affiant has further stated that similar view has been taken by this Court in First Appeal No.1697 of 2003 as well as in Writ Petition No.7498 of 2002. Rule 21 of the Rules for Keeping Place of Public Entertainment in Greater Bombay 1953 is quoted and it is contended that the interim protection as prayed for cannot be granted in this petition. When this court has taken consistent view on relying upon the provisions of Rule 21, there is no question of granting any protection.

6. Mr. Kanasra, placed reliance on the order passed by this Court (Division Bench) in writ petition No. 4393 of 2003 and insisted for the protection being continued. However, in the said case,the licence granted and which was in operation was suspended and therefore, the protection was granted. In the instant case, on the other hand, the petitioner has been continuing with the concerned amusement activities without obtaining any licence and therefore, it cannot be continued by discretionary order of protection.

7. The petition is, therefore, disposed of by directing the lower appellate authority to hear and decide the appeal as well as stay petition filed therein on its own merits as expeditiously as possible and in any case within a period of four weeks from today, after hearing the petitioner.